

BY HAND

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

December 17, 2003

Re: Massachusetts Electric Company and Nantucket Electric Company, D.T.E. 03-126

Dear Secretary Cottrell:

On December 1, 2003, pursuant to G.L. c. 164, § 1A(a), and 220 C.M.R. § 11.03(4), Massachusetts Electric Company and Nantucket Electric Company ("MECo" or "Company") filed with the Department of Telecommunications and Energy ("Department") their 2003 reconciliation filing. The filing incorporates several rate change proposals to be effective on January 1, 2004. On December 10, 2003, the Department issued an order of notice requesting comments by December 17, 2003. Pursuant to that notice, the Attorney General submits this letter as his Initial Comments.

MECo seeks approval of rates that will increase its average standard offer service rates by \$0.00211/kWh. December 1, 2003 Cover letter. The Company proposes the following changes:

- the average transition charge decreases from \$0.00995/kWh to \$0.00779;
- the average transmission charge decreases from \$0.00610/kWh to \$0.00587;
- the default service adjustment charge decreases from \$0.0001 to (\$0.00002)/kWh;
- the standard offer adjustment factor increases from (\$0.00062) to \$0.0000; and
- the standard offer charge increases from \$0.04700 to \$0.0510/kWh.

In addition to the changes in the reconciling rates listed above, the Company's filing includes the implementation of a default service adjustment provision currently pending approval by the Department. *See* D.T.E. 03-122 (tariff modifications to allow the recovery of Default service related RPS costs). The proposed tariffs also incorporate an unapproved exogenous factor adjustment that can only be allowed after an investigation and hearings. *Compare* D.T.E. 03-124 (exogenous proposal) and *New England Electric System/Eastern Utilities Associates*, D.T.E. 99-47, Settlement Agreement §IC2, p. 16. In addition, in a separate

docket MECo petitioned for approval to fix the Standard Offer Service Fuel Adjustment (“SOSFA”) at its current level of 1.424 cents per kilowatt-hour for the period of January 1, 2004 through February 28, 2005, the remainder of the Standard Offer Service period.¹ D.T.E. 03-123. The proposed tariffs for Nantucket Electric Company also incorporate the proposed cable surcharge currently pending before the Department for approval. According to the Company’s bill impact analyses for all of these tariff changes,² the monthly bill for a residential customer using 500 kWh each month will increase by \$1.07 or 1.8%. Testimony of Theresa M. Burns, pp. 27-28.

The Department should reject all rate changes that are the subject of other proceedings until after it issues a final order and the appeal period has expired in the related dockets, i.e. RPS default service modifications, exogenous factor adjustments, freezes of standard offer adjustments and cable surcharge modifications. For the proposed transition charge adjustments the Department, consistent with precedent, should open an investigation into the Company’s proposed reconciliation as it has for all the Company’s prior filings. “[T]he Department must ensure that the proposed reconciliations are consistent with or substantially comply with the Electric Utility restructuring Act, Chapter 164 of the Acts of 1997 (“Act”) the company’s approved restructuring plan, applicable law, and Department precedent.” *Boston Edison Company*, D.T.E. 98-111, p. 4 (October 19, 1999). See *Boston Edison Company*, D.T.E. 98-111 (December 31, 1998); *Boston Edison Company*, D.T.E. 99-107 (January 4, 2000).

As for the Standard Offer and its SOSFA component, the Department should reject the Company’s filing and instead follow its established practice for setting the SOSFA and the Standard Offer Adjustment Factor.³ Changes to the Restructuring Settlement Agreement should not be addressed in a piecemeal fashion. Comments on the Company’s proposal to freeze the Standard Offer rate and engage in an information program should be addressed in D.T.E. 03-123 on January 14, 2004. In any case, the Attorney General objects to any changes in the calculation

¹ In that docket the Company asked the Department to find that its proposal is consistent with MECo’s Restructuring Settlement Agreement and wholesale Standard Offer contracts approved by the Department in D.P.U. 96-25.

² Pursuant to 220 C.M.R. §1.10(3) the Attorney General incorporates by reference those filings and his comments in dockets D.T.E. 03-123 and DTE 03-124 into this docket.

³ In a letter dated December 12, 2003 in D.T.E. 03-123, the Company has set forth a calculation of the Standard Offer rate which would go into effect on January 1, 2004. The retail price for Standard Offer Service should equal \$0.06802 per kilowatt-hour. This price represents the sum of the base charge for Standard Offer Service of \$0.051, a SOSFA of \$0.01223 (calculated using the 2004 fuel trigger), and a Standard Offer Adjustment Factor of \$0.00479, designed to recover MECo’s under-collection as of September 2003.

of standard offer rates.

MECo proposes to set a firm price for Standard Offer Service equal to the 2004 base Standard Offer Service rate of 5.1cents/kWh plus the currently effective SOSFA surcharge of 1.424 cents/kWh. MECo proposes a fixed Standard Offer rate of 6.524 cents/kWh for the period January 1, 2004 through February 2005. Fixing the SOSFA at 1.424 contravenes the Restructuring Settlement Agreement, Department precedent and the public interest.

The Department and the Federal Energy Regulatory Commission ("FERC") reviewed and approved the MECo/New England Power Company ("NEP") and Eastern Edison Company ("Eastern Edison")/Montaup Electric Company ("Montaup") Restructuring Settlement Agreements in D.P.U. 96-25 and D.P.U. 96-24 and in Docket Nos. ER97-678-000 and ER97-680-000. The Standard Offer is an integral part of the comprehensive settlement that allowed NEP and Montaup to terminate their all-requirements contracts with MECo and Eastern Edison and recover stranded costs from retail customers.

The terms of both the MECo and Eastern Edison wholesale and retail restructuring agreements require the Company to offer Standard Offer Service at a set of fixed prices subject only to a fuel index. *See Restructuring Settlement Agreement*, D.P.U. 96-25, Book 1 at 26; D.P.U. 96-24, Book 1 at 12; D.P.U. 96-24, Book 2 at 14. In this filing the Company proposes to lock in the current effective SOSFA surcharge of 1.424 cents/kWh through February 28, 2005. If the SOSFA surcharge is fixed at the current level, however, it will not operate as designed. Instead, it would operate as a mechanism to artificially inflate Standard Offer Service rates above levels calculated under Department precedent.⁴

The Company's SOSFA filing violates the express terms of the Restructuring Settlement Agreement and should not be included in any transition charge reconciliation filing. The

⁴ In D.T.E. 03-123, the Company argued that its SOSFA proposal is consistent with the Department's decision in *Fitchburg Gas and Electric Company*, D.T.E. 02-84 (2003). Fitchburg Gas and Electric Light Company ("Fitchburg") sought to increase its SOSFA to recover deferrals from 2000 and to recover the entire SOSFA deferral by the end of 2003. *Id.* at 1. MECo's proposal is clearly distinguishable from Fitchburg's. Fitchburg has no Restructuring Settlement Agreement and is not bound to the same restructuring plan terms as are MECo and Eastern Edison. Unlike Fitchburg, there is no evidence that MECo has under-collected the SOSFA costs due to the operation of the SOSFA mechanism. Fitchburg's deferrals are proportionally much larger than the Company's. If there is an under-collection of the standard offer costs, the Company can use the standard offer adjustment factor mechanism. This increase in a rate component must then be included in the rate cap calculation. *See Restructuring Settlement Agreement*, D.P.U. 96-25, Book 1 at 34-35; *Massachusetts Electric Company and Nantucket Electric Company*, D.T.E. 00-109 at 6-7 (2001); *Massachusetts Electric Company and Nantucket Electric Company*, D.T.E. 98-123 at 3 (1999).

SOSFA formula and Standard Offer transition plan were negotiated and agreed to voluntarily. The Company now seeks to change unilaterally these Department and FERC-approved contractual arrangements.⁵ MECo has also not shown that the existing Standard Offer terms are contrary to the public interest or are unjust or unreasonable.

The Department has endeavored to “provide electricity buyers and sellers with appropriate price signals.” *Default Service*, D.T.E. 02-40-B at 5. MECo’s distortion of prices and information would send incorrect pricing signals and yield an inefficient competitive market. The Department has also found consistently that it is inappropriate to artificially increase rates for the purpose of spurring competition. *Default Service*, D.T.E. 99-60-A at 11 (2000) (rejecting the inclusion in default service rates of an adder for marketing costs). See *Default Service* D.T.E. 02-40-B at 18 (“No additional information was received in this proceeding to merit the Department’s reconsideration of this issue.”).⁶ The Department should reject MECo’s proposal to accomplish through this filing what the Department has twice rejected.

The Department should reject the proposed tariffs and order the Company to file new tariffs that comply with the requirements of the Restructuring Settlement Agreement, the Electric Utility Restructuring Act of 1997, and Department precedent.

Sincerely,

Alexander Cochis
Edward Bohlen
Assistant Attorneys General

⁵ “Rate filings consistent with contractual obligations are valid; rate filings inconsistent with the contractual obligations are invalid.” *Gulf States Utilities Company v. Federal Power Commission*, 518 F.2d 450, 452 (D.C. Cir. 1975), citing *Federal Power Company v. Sierra Pacific Power Company*, 350 U.S. 348(1956), *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958) (Supreme Court has made clear that “the contract between the parties governs the legality of the filing.”)

⁶ The Department’s conclusion is supported by a recent Maine Public Utilities Commission customer survey that found there is very little support for efforts to encourage more suppliers to enter the market by raising the standard offer. *Public Utilities Commission Residential Survey*, prepared by Critical Insights Strategic Market Research, November 2002 at 28. Nearly two-thirds of residential customers who responded to the survey opposed this idea, with 43% voicing strong opposition. *Id.*